

BOARD OF GOVERNORS OF CONCORDIA UNIVERSITY

MINUTES OF THE OPEN SESSION OF THE MEETING OF THE BOARD OF
GOVERNORS HELD ON WEDNESDAY, 16 MAY 1990, IMMEDIATELY FOLLOWING
THE CLOSED SESSION, IN ROOM AD-308, LOYOLA CAMPUS

Attendance: Present: Mr. R.K. Groome, Acting Chairman, Chief Justice A. B. Gold, Chancellor, Mr. B. Aune, Prof. B. Barbieri, Ms. L. Brodrick, Ms. M. Donaldson, Mr. J. N. Economides, Dr. T. Fancott, Prof. M. Foster, Prof. S. Friedland, Dr. D. B. Frost, Dr. H. Habib, Ms. L. Honosutomo, Mr. P. Howlett, Dr. P. Kenniff, Mr. F. Knowles, Sister E. McIlwaine, Mr. D. McIninch, Mr. D. W. McNaughton, Mr. S. O'Hara, Ms. C. Shamy, Mr. C. I. Taylor, Ms. M. Vennat, Ms. A. Wilson Wright, Ms. S. Woods

Officers of the University: Dr. M. Cohen, Dr. C. Giguère Dr. R. Sheinin, Me B. Gaudet

Absent: Mr. M. J. Bourgault, Mr. L. Ellen, Mr. J. R. Firth, Me A. Gervais, Mr. T. Hecht, Mr. P. Ivanier, Mr. R. Lawless, Mr. A.H. Michell, Mr. A. Mohammed, Me J. J. Pepper, Mr. M. Saidou, Mr. J. H. Smith, Mr. W.W. Stinson

Guests: Mr. Alec Duff, Father S. Drummond

DOCUMENTS CONSIDERED AND ATTACHED TO THESE MINUTES:

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| BG-90-4-D30 | - | Revised Code of Conduct (Non-Academic) |
| BG-90-4-D31 | - | Proposed Policy on Sexual Harassment |
| BG-90-4-D32 | - | Memorandum from the Secretary of Senate concerning the University Budgets |
| BG-90-4-D33 | - | Report to Senate on the academic implications of the 1990-91/1991-92 Provisional Operating Budgets and the 1990-91 Capital Budget |
| BG-90-4-D34 | - | Concordia University Operating Budget for 1990-91 |
| BG-90-4-D34A | - | Concordia University Operating Budget for 1991-92 |
| BG-90-4-D35 | - | Resolution and supporting documentation from the Employee Benefits Committee, pertaining to Ad hoc adjustments to the Pension Plan |
| BG-90-4-D36 | - | Resolution and supporting documentation from the Employee Benefits Committee, pertaining to further adjustments to the Pension Plan in compliance with Bill 116 (the Supplemental Pension Plans Act of Quebec) |
| BG-90-4-D37 | - | Establishment of a Charitable Foundation (background document from the Director of University Advancement) |

- BG-90-4-D38 - Application for incorporation of a Corporation without share capital under Part 11 of the Canada Corporations Act
- BG-90-4-D39 - Draft By-laws with respect to the University Foundation
- BG-90-4-D40 - Report of the Rector to the Board of Governors on the approval of sundry fees by the Office of the Rector

1.1 The Chairman waived his remarks.

1.2 Approval of the Agenda

Mr. Groome advised that item #11 should be removed from the Agenda and postponed to the June meeting. The Agenda was approved as modified.

1.3 Approval of the Minutes

It was moved and seconded (Habib, McIninch) and unanimously RESOLVED:

R-90-51 *THAT the Minutes of the Open Session of the previous meeting, held on 21 March 1990, be approved.*

2. There was no business arising from the Minutes.

3. Approval of the revised Code of Conduct (Non-Academic)

The motion to approve the revised Code of Conduct (Non-Academic) was moved by Dr. Kenniff, seconded by Mr. Knowles.

Dr. Kenniff explained that during the revision process, which went on for several years, the Code of Conduct had passed various stages of drafting and rewriting. At the end of the process, the final draft was submitted to the Executive Committee, which had identified a potential problem with respect to Article 3, and had referred it to the Benefits Committee. After careful consideration, the Benefits Committee had proposed a modified version of the said Article 3, which is the one appearing in the proposed revised Code.

Referring to the various representations which had been forwarded to the Governors about that issue, Dr. Kenniff advised that to postpone the adoption of the Code of Conduct, as had been suggested, would not be viewed favourably by many members of the University who are eagerly awaiting the implementation of the new Code. Dr. Kenniff pointed out that the concerns expressed focused on a rather narrow application of the Code, a matter which would better be dealt with as a matter of policy rather than law.

Referring to the CUFA motion, Dr. Fancott asked whether the amendment had been submitted to the University community. Dr. Kenniff replied that details of consultation

were given in the various documents submitted to the Board. The Code of Conduct has been submitted to a complete consultation process up to the Executive Committee, including representatives of all the University constituencies. Dr. Kenniff added that he felt the expression of concern was justified, but he felt that the Code might not be the best place to address this concern, through the establishment of normative prescriptions.

Dr. Habib suggested the Code of Conduct should be approved, less Article 3 to be deferred to a later date. Prof. Foster suggested that Article 3 be removed from the proposed text and tabled until the October meeting of the Board. He so moved, seconded by Dr. Habib, as an amendment to Dr. Kenniff's motion. Dr. Kenniff said an alternative solution would be to replace proposed Article 3 by Article 12 of the current Code of Conduct, pending further study of this issue. If Mr. Knowles agreed to that change, Dr. Kenniff would amend his original motion. Mr. Knowles having agreed, Dr. Habib and Prof. Foster withdrew their amendment.

A lengthy discussion ensued on the main motion as amended (as moved by Dr. Kenniff, seconded by Mr. Knowles).

Prof. Barbieri said he agreed with the amendment, but that one could not look at the Code of Conduct separately from the next item, i.e. the Sexual Harassment Policy. Dr. Kenniff answered that, precisely, the two documents had been considered in conjunction. He explained that it had been decided that the Sexual Harassment Policy would be harmonized with the Code of Conduct. Towards the end of the process, the two documents were scrutinized to ensure that the procedures were similar and also that the language used was consistent between the two texts.

Ms. Wilson Wright said she supported the amended version of the main motion. She applauded the intent underlying the Code of Conduct and the Sexual Harassment Policy, stating that it was consistent with the vision of the University's moral and ethical responsibility which had been promoted at the Seminar "The Future of Concordia" (30 March 1990). Concerning the impact of Article 3, Ms. Wilson Wright said she hoped to see a broad consultation within the entire University community.

Prof. Barbieri raised a number of legal questions with respect to the application of the Code of Conduct, which Dr. Kenniff answered. He commented that the rules for the conduct of hearings were the rules of natural justice, which need not be defined in the Code because they have been defined by the Courts. As to recourses for individuals who might be the victims of frivolous complaints, Dr. Kenniff said it is always within the purview of the University to determine its own rules, but the existence of procedures under the Code of Conduct does not preclude anyone from exercising a recourse before the regular Courts of justice.

Prof. Barbieri reiterated his concerns about the issue of confidentiality and the potential damage to one's reputation that may be caused by an unfounded or frivolous complaint. In support of Dr. Kenniff 's position, Mr. McIninch commented that should a fundamental right be denied, one always has the right to seek redress through a Court action.

Summarizing the conclusions of the debate, Dr. Kenniff repeated the terms of the amended main motion, namely that the Code of Conduct be approved, subject to removing amended Article 3 and inserting current Article 12 in its place. He promised that a new proposal would be submitted to the Board in October 1990 or before. In the meantime, the contentious Article 3 will be carefully considered by the Office of the Rector. Dr. Kenniff assured the Governors that he was very sensitive to the concerns expressed, but, he said, this issue must be examined in the light of implications which go beyond those raised in the debate today.

It was moved and seconded (Kenniff, Knowles) and carried, with two abstentions:

R-90-52 *WHEREAS as the current Code of Conduct (Non-Academic) has been in force for several years, it was deemed appropriate to undertake a major revision of its provisions in order that it may better respond to the needs of the University community; AND*

WHEREAS such a revision, conducted under the direction of the Supervisory Board, has now been completed, and the proposed revised text requires the approval of the Board of Governors.

THAT on the recommendation of the Executive Committee, the revised Code of Conduct (Non-Academic), as set out in Document BG-90-4-D30, except for the proposed Article 3 which is removed and replaced by Article 12 of the current Code, be approved, to become effective on 1 September 1990.

4. Approval of the proposed Sexual Harassment Policy

The motion to approve the proposed Sexual Harassment Policy was moved by Dr. Kenniff, seconded by Sister McIlwaine. A lengthy debate ensued.

Prof. Foster said he found the document very good, but raised three questions: 1) How is the Sexual Harassment Officer to be appointed? 2) What will be the composition of the Advisory Committee? 3) How are the Hearing Boards to be appointed, and who is going to choose the members?

With respect to the third question, Dr. Kenniff said the answer was in the text of the Code of Conduct: the Hearing Board members will be chosen from a Standing Panel of 24

members, composed of three pools of eight members, representing respectively the faculty members, the students and the non-academic staff, and nominated by their respective constituencies. The Sexual Harassment Officer will be appointed by the Office of the Rector, after the customary advertising procedure. As to the Advisory Committee, Dr. Cohen indicated that the composition was similar to that of the Committee which recommended this policy. Dr. Cohen took this opportunity to thank the Committee members for their good work.

Prof. Barbieri asked about the consultation process, adding he felt the consultation had not been as wide for this policy as it had for the Code of Conduct. Dr. Cohen replied that the consultation had been at least as extensive. Concerning the legal implications, Prof. Barbieri enquired whether this policy could be challenged in Court because it was too vague (notably, the definition of sexual harassment was too broad, in his view).

Dr. Kenniff said it was not the intent of the Advisory Committee, nor is it the University's, to have a prescriptive policy. In relation to the definition of sexual harassment, Dr. Habib mentioned that last Fall he had been a member of a Committee reviewing a sexual harassment case, and that he would have found it very helpful to have a definition, but there was none at the time. Dr. Cohen indicated that several definitions of sexual harassment had been proposed and discussed, but that in the end the one that was retained is the definition used by the Canadian Association of University Teachers (C.A.U.T.).

Concerning the Statement of Purpose, at Article 4, Dr. Habib said he would like to see a more balanced statement. He suggested the following wording:

"Although men and women can be victims of sexual harassment, women are more often the targets of these practices. Sexual harassment can be a form of abuse of authority, and, in the case of women, (delete the word "or") a manifestation of the perception of women's subordinated societal status etc.

Dr. Habib moved it as an amendment to the main motion, and was seconded by Ms. Donaldson. The mover of the motion, Dr. Kenniff, agreed to the amendment.

Mr. McNinch asked whether a defendant was allowed to be represented by a lawyer in cases where the sanctions could be suspension or expulsion. Dr. Kenniff said that under the current ("old") Code of Conduct, there was a provision stating that the advisors were to be members of the University community, which include faculty members, registered students and non-academic staff. We are following the same rule for the policy, he said. The University has even defended this principle before the Courts, in one case in which the trial judge upheld the University's decision. (The case has been heard by the Court of Appeal, but no judgment has been rendered yet.)

Prof. Barbieri expressed the view that this proposed policy required about two months of further consultation before approval. He referred to the definition of sexual harassment (article 7), pointing out that paragraph c) was capable of a very broad interpretation.

Prof. Foster indicated there was a grammar mistake at page 3, article 8 d) ("any person affecting their application") as well as a split infinitive (at page 12, #2 of Appendix A: "to actively promote").

Mr. Groome advised that the Board could not, in a meeting such as this one, attempt to rewrite this policy or fine tune its provisions.

Mr. Howlett expressed a concern about Article 49 - pertaining to the confidentiality of hearings and the discretion of the Hearing Board should one of the parties request to have an open hearing. Dr. Kenniff answered that there was a reason for having a different approach in the policy. It may well be, he said, that the Hearing Board may prefer to have open hearings in some cases, perhaps in the interest of the parties themselves. It will depend on the circumstances of each case. He undertook to investigate this matter further and to report back to a future Board meeting.

Chancellor Gold commented that sometimes there is a conflict of principles, and one has to choose the least damageable solution.

It was moved and seconded (Kenniff, McIlwaine) and carried on a majority vote with four abstentions:

R-90-53 *WHEREAS the University has the legal and moral responsibility to ensure an environment free from sexual harassment for all its members; AND*

WHEREAS to fulfill this responsibility, the University wishes to adopt a policy on sexual harassment, providing a choice of procedures for resolution of conflicts, and outlining a range of sanctions and remedies in cases of non-compliance with the said policy.

THAT on the recommendation of the Executive Committee, the Policy on Sexual Harassment, as set out in Document BG-90-4-D31, be approved, to become effective on 1 October 1990, subject to the following amendment, namely that Article 4 in the Statement of Purpose be replaced by the following text:

"Although men and women can be victims of sexual harassment, women are more often the targets of these practices. Sexual harassment can be a form of abuse of authority, and, in the case of women. (delete the word "or") a manifestation of the perception of women's subordinated societal status. "... etc.

5. Approval of the Operating Budgets for 1990-91 and 1991-92

In the absence of Mr. Smith, Chairman of the Budget Committee, Mr. Aune, the Vice-Chairman, reported on behalf of the Budget Committee. After the draft provisional operating budgets had been tabled at the March meeting of the Board, Senate has been consulted through the Senate Committee on Academic Planning and Priorities (SCAPP), whose report had been circulated. At its meeting held on 10 May 1990, the Budget Committee had examined the two proposed operating budgets and recommended their approval by the Board.

Dr. Fancott asked whether the Operating Budgets reflected the fact that the University wanted to hold the increase in faculty salaries to less than one percent. Dr. Cohen referred to page 7 of the 1990-91 Operating Budget, where provision is specifically made for eventual salary agreements.

It was moved and seconded (Aune, Brodrick) and unanimously RESOLVED:

- R-90-54 *THAT, on the recommendation of the Budget Committee and that of Senate, the Operating Budgets of Concordia University for the years 1990-1991 and 1991-1992, as set out in Documents BG-90-3-D23, BG-90-4-D34 and BG-904-D34A, be approved.*

6. Approval of the Capital Budget for 1990

It was moved and seconded (Aune, Knowles) and unanimously RESOLVED:

- R-90-55 *THAT on the recommendation of the Budget Committee and that of Senate, the Capital Budget of Concordia University for 1990-1991, as set out in Document BG-90-3-D24, be approved.*

7. Approval of Ad hoc Adjustments to the Pension Plan for 1990

In the absence of Mr. Lawless, Chairman of the Benefits Committee, Mr. Economides, the Vice-Chairman, reported on behalf of the Benefits Committee and provided background information.

It was moved and seconded (Economides, Frost) and unanimously RESOLVED:

- R-90-56 *THAT, on the recommendation of the Employee Benefits Committee and that of the Budget Committee, and effective June 1, 1990, the pension in payment to members, or the beneficiaries of members who retired from active service be increased by the rate of increase in the Consumer Price Index for the twelve month periods ending*

December 31, 1988 and December 31, 1989, less two (2) per cent per annum: specifically, that pensions for members who retired on or before January 1, 1988 be increased by five and two tenths (5.2) per cent, and pensions for members who retired between January 1, 1988 and December 31, 1989 be increased by a proration of said percentage.

AND

THAT, effective June 1, 1990, the rate of adjustment applied to the Final Average Earnings of employees in receipt of benefits under the Long Term Disability Insurance Plan, be increased by five and two tenths (5.2) per cent for the period from January 1, 1988 to December 31, 1989.

8. Approval of further adjustments to the Pension Plan to comply with Bill 116 with respect to Part-time Employees

It was moved and seconded (Economides, Barbieri) and unanimously RESOLVED:

R-90-57 *WHEREAS the Supplemental Pension Plans Act of Québec (Bill 116) requires that eligible non full-time employees be given pension benefits similar to those provided for full-time employees;*

WHEREAS incorporation of eligible non full-time employees in the current Plan represents a simple and obvious means of providing equivalent benefits;

WHEREAS use of the existing Plan for all employees is less costly to administer and communicate than two different plans would be;

THAT on the recommendation of the Employee Benefits Committee and that of the Budget Committee, the 'Pension Plan for the Employees of Concordia University' be amended effective June 1, 1990 to provide for the inclusion of eligible non full-time employees as required under the Supplemental Pension Plans Act of Québec (Bill 116). Further, that pension benefits for such employees be based on annualized salaries and fractional years of credited service to be determined in accordance with definitions appropriate to each group.

In accordance with the Supplemental Pension Plans Act of Québec (Bill 116), an employee is eligible if in 1989:

- earnings equalled or exceeded 35% of the Yearly Maximum Pensionable Earnings (\$9695);

OR

- hours worked equalled or exceeded 700.

Dr. Frost enquired whether, in order to be eligible, a part-time faculty member must teach twelve (12) credits. Dr. Cohen said that at current rates, yes, this is correct.

9. Establishment of the Concordia University Foundation

In the absence of Mr. Ellen, Chairman of the Advancement Committee, Dr. Kenniff moved the motion, seconded by Dr. Habib, with the following amendment: "that in provision #7.1 of the draft By-laws (Document BG-90-4-D39) the minimum number of five (5) be changed to a minimum number of seven (7)".

Dr. Kenniff explained the importance of a Foundation for Concordia. This nonprofit, non-taxable corporate entity will be used to raise, receive and manage endowment funds, to safeguard donors' funds, and also to facilitate the financing and renting of the four half-floors of the Sir George Williams library building as well as the eventual transfer of ownership to the University without attracting capital gains tax or income tax. It also means that endowment funds given to the Foundation will not be within the reach of the Government, which should bring some comfort to donors. In closing his remarks, Dr. Kenniff paid tribute to Mr. Ellen, Dr. Cohen and Mr. C. Hyde, the Director of Advancement, who had spent considerable time working on this issue.

During the ensuing discussion, Mr. Economides asked three questions: 1) Will the University be required to disburse 95% of the money raised? 2) Do we have to ask for a separate tax number? 3) Are we going to operate this like a hospital foundation? Dr. Cohen answered these questions as follows: 1) We have been told by our lawyers that there was no problem, i.e. we will not be required to disburse 95% of the money; 2) the answer is: no; 3) Operating costs will be absorbed by the University.

Having ascertained from Dr. Cohen that the University had no intention of leasing space to a third party, Mr. Knowles raised the following concerns about the project of adding four half-floors to the downtown library complex. 1) Is the project acceptable to the Quebec government? - Dr. Kenniff answered that indeed, the project had been fully discussed with officials of the government, who said they agreed. 2) If there is a shortfall in the rental subsidies, the University will not get every dollar back, is that correct? - Yes, said Dr. Kenniff, that is correct. 3) How is the building of the four floors going to be financed? - Dr. Cohen said the University planned to finance this through a bank loan, adding that already several banking institutions were prepared to lend us the funds. Mr. Knowles expressed the hope that the monies raised by the Foundation would not be used to guarantee the loan.

Ms. Brodrick having expressed a concern about taxes and property taxes, Dr. Cohen answered that there will be no property taxes, because the University benefits from an exemption as an educational institution, and that, furthermore, the Foundation will not make a profit.

Ms. Wilson Wright asked who would be the voting members of the Board of the Foundation. Dr. Kenniff answered that this was a separate issue which would be dealt with later, but not before next September, when it will come back to the Board of Governors.

It was moved and seconded (Kenniff, Habib) and unanimously RESOLVED:

R-90-58 *WHEREAS the University Advancement Committee, after careful consideration and upon the advice of experts, has deemed it advisable to establish a charitable foundation, which should be incorporated as a corporation without share capital under Part II of the Canada Corporations Act; AND*

WHEREAS before proceeding with the application for incorporation, the approval of the Board of Governors is required.

THAT, on the recommendation of the University Advancement Committee, the establishment of a Concordia University Foundation be approved, for the objects and under the conditions stipulated in the draft By-laws, the whole as set out in Documents BG-90-4-D37, BG-90-4-D38 and BG-90-4-D39, the latter as amended at page 3, article 7. 1.

10. Report of the Rector on the approval of sundry fees by the Office of the Rector for the academic year 1989-90

Dr. Kenniff reminded the Governors that there had been a delegation of authority from the Board to the Office of the Rector to approve these sundry fees, and therefore, the report contained in Document BG-90-4-D40 was for information only, not for approval.

Dr. Kenniff pointed out two errors at page 2, "Residence Fees": 1) in paragraph one, "per month" should read "per year", 2) in paragraph two, line one, \$1550 a month should read: \$1575 per year.

12. Report of the Rector

12.1 Dr. Kenniff said that, as the Governors were already aware, the University has resolved the problem of the construction contract and work has begun on the site. He expressed hope that the rotating strikes in the construction industry would not delay the project.

12.2 The subject of the Loyola High School purchase had been dealt with earlier in the meeting.

12.3 Dr. Kenniff announced that the Annual Giving Campaign was close to reaching its objective of \$1,000,000. Mr. Aune, Chairman of the Annual Giving, indicated that the campaign would probably close on 15 June.

13. Report of the Vice-Rectors

13.1 Dr. Sheinin said she had nothing to report.

13.2 Dr. Cohen said he had nothing to report.

13.3 Dr. Giguère said he had nothing to report.

Mr. Groome commended the Vice-Rectors on the brevity of their reports.

Prof. Foster then said he wished to raise a question under the Rector's report. Referring to the letter addressed to all the Governors by the Rector and the Chairman of the Board, he criticized the fact that the letter had been sent with the Board meeting documents, thus giving it an official character, whereas it should have been sent on its own. Furthermore, said Prof. Foster, the letter was ill-advised and inaccurate, and did not reflect the actual status of the negotiations with CUFA. He alleged that the reason the negotiations had stopped was that the University turned down every proposal which the CUFA negotiators had presented. Prof. Foster also accused the University of not negotiating in good faith, particularly with respect to salary increases, when it pretended to follow government policy for the public sector: he said the government policy for the public sector was 5%, and not the 4%. He further objected to the use of the term "University" to describe the "Administration". Prof. Foster concluded his intervention by requesting that the Rector and the Chairman withdraw their letter to the Board members.

Commenting on this suggestion, Mr. Groome said he felt it would be inappropriate to modify or withdraw the said letter in the absence of one of the signatories.

Dr. Kenniff indicated firstly that the letter had been sent in the Board mailout as a matter of convenience, in order to save money. Secondly, he said he had no intention of withdrawing the letter, which is an accurate reflection of his and the Chairman's views, but also, he believes, an accurate reflection of reality. Dr. Kenniff then went on to correct some of the statements made by Prof. Foster as to the Administration's attitude during the negotiations. As for the use of the words "the University" instead of "the Administration", Dr. Kenniff advised that for the purpose of the Collective Agreement,

the University Corporation is one of the parties, and that one should read no more than that in the use of the words.

Dr. Cohen reminded the Governors that discussions were still going on, in spite of what CUFA may tell its members. He said there was a lot of disinformation, asserting the right of the Administration to communicate its version of the facts, and let the university community be the judge. Correcting a statement made earlier by Prof. Foster, Dr. Cohen said that the norm imposed by the Quebec government as to indexation for its employees was not 4.5% or 5%, but 4%. No more than 4%.

Sister McIlwaine, as President of an educational institution (Marianopolis College) coming under the government salary policy, confirmed that the figure of 4% used by Dr. Cohen for interim salary adjustments in 1989 to members of CUFA was correct.

Dr. Fancott said it was important for both parties to do everything that can be done to keep the negotiations going. He stated that he respected the position expressed by the Rector, but he felt that whenever a position is published, the opposite position should be published as well, for the sake of fairness.

15. Question period

Ms. Woods reminded Dr. Cohen that, at the last meeting, in March, she had raised a question about the University's liability insurance, i.e. the amount of coverage. Dr. Cohen said that unfortunately he had forgotten to enquire about this but promised to have an answer by the June meeting.

Mr. McNaughton said that whenever a question such as this one was left unanswered, it should be brought forward at the next meeting under "Business arising from the Minutes".

16. Mr. Groome said he had just been informed that this was the last meeting attended by Mr. McIninch, as his term will be expiring in September and he will be unable to attend the June meeting. Mr. Groome thanked Mr. McIninch for his presence and his contribution.

There being no other business, the meeting terminated at 9:15 p.m.

Bérengère Gaudet,
Secretary of the Board of Governors